IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20532 of 2005
With
SPECIAL CIVIL APPLICATION No. 20533 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MURARKA CABLES & CONDUCTORS LTD
Versus
RURAL ELECTRIFICATION BOARD THROUGH HIGH COMMISSIONER

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Appearance :
MR KIRTIDEV R DAVE for the Petitioner
None for the Respondent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 03/05/2007

ORAL JUDGMENT

1. Though Rule issued on 29.03.2006 is served, nobody appears

for the respondent.

2. Present petitions are filed by petitioner – original applicant – judgment creditor being aggrieved by order passed below applications Exhs.65 and 64 in Civil Misc. Application Nos.3 and 2 of 1998, respectively dated 23.08.2005 by the learned Additional Senior Civil Judge, Gandhidham – Kachchh. The learned Judge was pleased to reject application Exhs.65 and 64.

Application Exhs.65 and 64 were filed praying that:

> "..... decree passed in CMA 3 and 2 of 1998 titled as Murarka Cables & Conductors Limited Vs. Rural Electrification Board and others be transferred to **The Registrar, High Court, Original Jurisdiction, Calcutta** having jurisdiction to try the execution together with the order of the Hon'ble High Court of Gujarat dated 24.08.2000 & certified copy of vakalatnama filed by the Government of Bangladesh in this proceedings having jurisdiction to try the execution."
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> It was also prayed that:
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> "A certificate to this effect be also issued in favour of the Petitioner stating that the decree had not been satisfied till this date and as per order of Gujarat High Court, petitioner had granted liberty to attach other assets of the defendants."

3. Mr.Dave, learned advocate for the petitioner in both these petitions invited attention of the Court to provisions of Rule 5 Order 21 of the Civil Procedure Code and Section 49 of Arbitration and Conciliation Act, 1996. He submitted that the fact that the Court of

learned Additional Senior Civil Judge, Gandhidham – Kachchh had entertained Civil Misc. Application Nos.3 and 2 of 1998 and had issued garnishi order, as the Court was prima facie of the view that the foreign award is enforceable in that Court, now if, the Court is of the opinion that the Court has no jurisdiction to execute the foreign award, it has to sent it to such Court which is having jurisdiction to execute the same.

The learned advocate for the petitioner submitted that in the present case, the learned Judge has to send the decree to the Registrar, High Court, Original Jurisdiction, Culcutta because as contended by the learned advocate for the petitioner – judgment creditor, the properties of the judgment debtors are situated within the territorial jurisdiction of Culcutta High Court.

4. The learned advocate for the petitioner submitted that the garnishi order issued by the learned Judge was challenged before this Court by filing Special Civil Application No.4297 of 2000, but that was by the World Bank only. It was not challenged by the judgment debtor. The World Bank contended before this Court that the World Bank enjoys immunity against the litigation and hence, the garnishi order be quashed so far as the World Bank is concerned. The said contention was accepted by this Court. That being so, the garnishi order issued by the learned Judge is operative qua the judgment debtor as on date. That being so, the learned Judge has already exercised the jurisdiction by issuing garnishi

order. Now if, the Court which has exercised the jurisdiction, finds that the decree cannot be executed by that Court, it has to transfer the decree to the Court which can execute the same.

5. In view of the above, present petitions are allowed. The learned Additional Senior Civil Judge, Gandhidham – Kachchh is directed to transfer the decrees to the Registrar, High Court, Original Jurisdiction, Culcutta as prayed for in application Exh.65 and 64 in Civil Misc. Application Nos.3 and 2 of 1998 respectively. Rule is made absolute with no order as to costs. Direct service is permitted.

(RAVI R.TRIPATHI, J.)

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